

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARK A COTTONHAM,)	
)	
Petitioner,)	No C 08-3028 VRW (PR)
)	
vs)	ORDER OF DISMISSAL
)	
SUPERIOR COURT, et al,)	(Docs # 2 & 4)
)	
Respondent(s).)	
_____)	

Petitioner, a prisoner currently incarcerated at the San Francisco County Jail, seeks a writ of habeas corpus under 28 USC § 2254 challenging a recent conviction and sentence from San Francisco County superior court. He also seeks leave to proceed in forma pauperis (docs # 2 & 4), which, good cause shown, is granted.

Prisoners in state custody who wish to challenge collaterally in federal habeas corpus proceedings either the fact or length of their confinement are first required to exhaust state judicial remedies, either on direct appeal or through collateral proceedings, by presenting the highest state court available with a fair opportunity to rule on the merits of each and every claim they seek to raise in federal court. See 28 USC § 2254(b)-(c). Petitioner has not done so. He has not presented the California Court of Appeal or the Supreme Court of California with an opportunity to rule on his claims. See O'Sullivan v Boerckel, 526 US 838, 845 (1999) (state's highest court must be given opportunity to rule on claims even if review is discretionary); Larche v Simons, 53 F3d 1068, 1071-72 (9th Cir 1995) (Supreme Court of California must be given at least one

1 opportunity to review state prisoners' federal claims). The petition for a writ of habeas
2 corpus is DISMISSED without prejudice to refiling after state judicial remedies are
3 exhausted.

4 The clerk shall close the file and terminate all pending motions as moot.

5 SO ORDERED.

6
7 

8 VAUGHN R WALKER
9 United States District Chief Judge
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

MARK A COTTONHAM,

Petitioner,

v.

SUPERIOR COURT et al,

Respondent.

Case Number: C08-3028 VRW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on August 6, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Mark A. Cottonham 2326138
County Jail 1
SF #377495
850 Bryant Street
Hall of Justice
San Francisco, CA 94103

Dated: August 6, 2008

Richard W. Wieking, Clerk
By: Cora Klein, Deputy Clerk

Cora Klein